

I. Claims 1-2 are drawn to a biopolymer having SKITHRIHWESASLL (SEQ ID NO: 1), classified in class 530, subclass 300 or class 530, subclass 350 for example.

II. Claims 3-9, 18-28 and 33-35 are drawn to methods and kits which not only detect SEQ ID NO: 1, further requiring a correlation to disease state, diagnosing, therapeutic avenues, an/or risk assessment, classified in class 436, subclass 518 and class 424, subclass 93.1 for example.

III. Claims 10-17 are drawn to kit for merely detecting SEQ ID NO: 1, classified in class 422, subclass 61 for example.

IV. Claims 29-32 are drawn to antibodies that bind SEQ ID NO: 1, classified in class 530, subclass 387.1/387.2 and class 424, subclass 130.1 for example.

Applicants hereby elect, with traverse, the Group II invention, for further prosecution on the merits.

It is understood that claims 1-2, 10-17, and 29-32 drawn to the non-elected invention, will remain pending, albeit withdrawn from further consideration in this application.

#### SUMMARY

This case is related, in claim format to several pending applications of which S.N. 09/846,352 is exemplary. After discussions with the Examiner in the '352 case, and subsequent to a Restriction Requirement and subsequent rejoinder under *Ochai*, Applicants have received a Notice of Allowability that the following claims would receive favorable consideration:

#### **CLAIMS OF S.N. 09/846,352**

*Claim 1. A biopolymer marker peptide consisting of SEQ ID NO:1 diagnostic for Type II diabetes.*

*Claim 3. A method for diagnosing Type II diabetes comprising:*

- (a) obtaining a sample from a patient;*
- (b) conducting mass spectrophotometric analysis on said sample in a manner effective to maximize elucidation of discernible peptide fragments contained therein; and*
- (c) comparing mass spectrum profiles of a peptide consisting of SEQ ID NO:1 to mass spectrum profiles of peptides elucidated from said sample; wherein recognition of a mass spectrum profile in the sample displaying the characteristic profile of the mass spectrum profile for the peptide of SEQ ID NO:1 is diagnostic for Type II diabetes.*

*Claim 6. The method of claim 3, wherein the sample is an unfractionated body fluid or a tissue sample.*

*Claim 7. The method of claim 3, wherein said sample is selected from the group consisting of blood, blood products, urine, saliva, cerebrospinal fluid, and lymph.*

*Claim 8. The method of claim 3, wherein said mass spectrophotometric analysis is Surface Enhanced Laser Desorption Ionization (SELDI) mass spectrometry (MS).*

*Claim 9. The method of claim 3, wherein said patient is a human.*

*Claim 10. A Type II diabetes diagnostic kit comprising: (a) a peptide consisting of SEQ ID NO:1 and (b) an antibody that binds to said peptide in a sample from a patient.*

*Claim 11. The diagnostic assay kit of claim 10, wherein said antibody is immobilized on a solid support.*

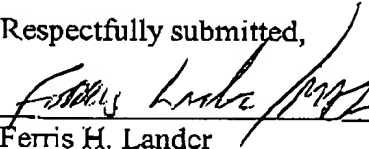
*Claim 12. The diagnostic kit of claim 10, wherein said antibody is labeled.*

Applicants thus traverse the requirement since claims of alternative scope have been deemed allowable in a single application.

In an effort to maintain equivalent scope in these applications, Applicants would respectfully request that the Examiner reconsider the requirement to include a similar grouping of claims. Applicants would elect such a group, without traverse, and file a supplemental amendment to place the claims in a similar form, so as to be commensurate in scope.

If the Examiner is amenable to these changes, please contact the undersigned via telephone, and a supplemental response will be filed immediately, via facsimile, in order to expedite prosecution.

Respectfully submitted,

  
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